

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,)
)
)
v.) Criminal Action No. 1:20-cr-143
)
ZACKARY ELLIS SANDERS,)
Defendant.)

ORDER

At issue pretrial in this twelve-count criminal prosecution for production, receipt, and possession of child pornography is the government's Motion for Order to Show Cause and to Seal (Dkt. 170) filed in this Court because Defendant Zackary Sanders, as plaintiff in a civil Freedom of Information Act ("FOIA") case in the U.S. District Court for the District of Columbia, has filed a public complaint that the government claims contains information covered by the Protective Order in this case (Dkt. 28). The government moves for the issuance of an order directing counsel for Defendant Zackary Sanders to seek permission from Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia to withdraw defendant's civil FOIA complaint in that case, *Sanders v. FBI*, Case No. 1:20-cv-3672 (D.D.C. Dec. 14, 2020) (Complaint), and place under seal those portions of the complaint that violate the Protective Order in this case. *United States v. Sanders*, Case No. 1:20-cr-143 (E.D. Va, April 27, 2020) (Protective Order). This issue has been fully briefed. Because the facts and legal contentions are clear from the record, oral argument is unnecessary and would not aid the decisional process. Accordingly, the matter is now ripe for disposition.

The Protective Order in this case, which was consented to by both parties, was issued on April 27, 2020 in order to protect sensitive information provided by a foreign law enforcement agency ("FLA") to the Federal Bureau of Investigation ("FBI") that is part of ongoing

investigations and prosecutions that would be jeopardized by publication of that information. The Protective Order ensures that the identity of the FLA is protected, as requested by the FLA as a condition for providing the information to the FBI, and that the name of the website and fact of the FLA's investigation of the website are not made public. Specifically, the Protective Order states that "[t]he defense team shall use discovery only for the preparation and litigation of this matter, and for no other purpose." Protective Order, ¶ 8. Furthermore, the Protective Order makes clear that "[a]ny discovery material, or information contained therein, that is filed with the Court . . . shall be filed under seal." *Id* ¶ 5. Defendant claims that the Protective Order does not apply because his FOIA complaint is derived wholly from information available in the public record. Although defendant's contention is largely accurate, the government is correct that some information in defendant's FOIA complaint should be sealed because it is derived from discovery in this case. Specifically, defendant's FOIA complaint references the fact the FBI is a partner of the FLA in [REDACTED] a fact derived from the discovery in this case. Furthermore, defendant's FOIA complaint makes numerous logical connections between sparsely detailed information that are only possible because of information derived from discovery in this case. In other words, in addition to some material clearly covered by the protective order, defendant's civil complaint also contains considerable material that would allow an outside observer to deduce protected material with ease, thus implicating and jeopardizing ongoing investigations.

Accordingly,

It is hereby ORDERED that the government's Motion for Order to Show Cause and to Seal (Dkt. 170) is GRANTED IN PART and DENIED IN PART. The motion is granted insofar as Defendant Zackary Sanders is DIRECTED to take prompt steps to seek permission from Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia to refile and place

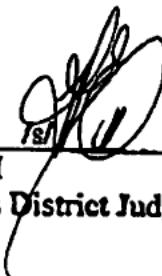
under seal his complaint in Case No. 1:20-cv-3672 and to allow defendant, as plaintiff in that case, to file redacted copies for the public record.¹ The motion is denied in all other respects.

It is FURTHER ORDERED that defendant take prompt steps, including seeking leave from Judge Jackson, to redact all the following information in unsealed filings in Case No. 1:20-cv-3672:

- i) any information identifying the FLA [REDACTED]
[REDACTED]
- ii) any information identifying the name of the target website, [REDACTED] and
- iii) and any information detailing the FLA's investigation into the target website.

The Clerk is directed to provide a copy of this Order to all counsel of record. The Clerk is further directed to provide a copy of this order and a copy of the Protective Order in this case (Dkt. 28) to Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia.

Alexandria, Virginia
January 19, 2021



T. S. Ellis, III
United States District Judge

¹ Of course, counsel in Case No. 1:20-cv-3672 are authorized to view information sealed pursuant to the Protective Order in this case—as is, without question, the U.S. District Court for the District of Columbia.